IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

Bail Appl..No. 4202 of 2007()

[CRIME NO.360/2007 OF PUNALUR POLICE STATION]

PETITIONRS/ACCUSED NOS.1 & 3:

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1. BIJU KUMAR, S/O. VARADHARAJAN NAIR,
   AGED 26 YEARS, GANESH VILASAM, KOMALAMKUNNU,
   PUNALUR.

2. VARADHARAJAN NAIR, S/O. NARAYANAN NAIR,
   AGED 60 YEARS, GANESH VILASAM, KOMALAMKUNNU,
   PUNALUR.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, REPRESENTING SUB INSPECTOR OF POLICE,
PUNALUR POLICE STATION.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4202 of 2007

Dated this the 13th day of July 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 and 3 in a crime registered inter alia under Sections 452, 308 and 392 I.P.C. The second accused is the brother of the first accused and the third accused is the father of the first accused. The alleged incident took place at about 9.30 p.m on 26/3/2007. The crux of the allegations is that when the de facto complainant was sitting in a shop, the first accused demanded a loan of Rs.100/- and when he refused to pay the amount, he was attacked by the first accused along with second and third accused causing injuries to the de facto complainant. Rs.10,000/- which was allegedly available with the de facto complainant was taken away by force by the accused, it is further alleged. Crime has been registered on the next day at 2 a.m Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioner submits that the allegations are totally false. The police is acting at the behest of the de facto complainant. The de facto complainant is an influential and affluent person. He is a money lender. He allegedly belongs to the blade mafia. According to the petitioners, the first petitioner's

marriage had taken place on 22/4/2007 and for that purpose, a loan was availed by the accused from the de facto complainant. That amount had been repaid by pledging the ornaments of the bride. But there was dispute about payment of interest on the loan amount. Demanding such amount, the defacto complainant and another had gone to the house of the accused and the accused were attacked by the defacto complainant and some other persons at his house. He has suffered injuries. Apprehending that action may be taken by the petitioners against the defacto complainant, false allegations have been raised with the connivance of the police. The police have obliged the de facto complainant by registering another crime as Crime No.359/2007, in that, the purpose of registration of that crime is to explain the injuries which the first petitioner had suffered in the real incident which had taken place. Police have obliged the de facto complainant by alleging that the first accused attempted to commit suicide by hitting himself with stones etc. and threatening suicide if he were arrested by the police. The real incident did not take place in any shop, as alleged by the de facto complainant; but in the house of the accused. The allegation under Section 308 I.P.C is raised with the sole intention of vexing and harassing the petitioners. In these circumstances, it is prayed that anticipatory bail may be granted in favour of the petitioners.

3. The learned Public Prosecutor opposes the application. Both case diaries have been perused by the learned Public Prosecutor. The learned Public Prosecutor submits that there is nothing at the moment to suspect that the petitioners have been falsely implicated by the de facto complainant in collusion with the police.

4. Having considered all the relevant circumstances and having particularly considered the wound certificate of the de facto complainant, I am persuaded to feel that there is no merit in the allegation raised under Section 308 I.P.C at the moment. I find force in the submission that the inclusion of Section 308 I.P.C would expose the petitioners to unnecessary difficulties and inconvenience. Otherwise, I am satisfied that the petitioners can be directed to surrender before the learned Magistrate and seek regular bail. I am satisfied that, in the interests of justice, appropriate directions can be issued under Section 438 Cr.P.C in the matter:

i) The petitioners shall surrender before the learned Magistrate at 11 a.m on 20/7/2007. They may apply for bail. Notice of such application for bail can be given to the Prosecutor in charge of the case even before surrender of the petitioners.

ii) The learned Magistrate shall consider the bail application as also the applications, if any, by the prosecution and pass appropriate orders on such applications on merits on the date of

surrender itself. While considering such application for bail, the learned Magistrate shall reckon that no allegations under Section 308 I.P.C has been raised against the petitioners. The petitioners shall abide by such orders to be passed by the learned Magistrate on merits.

iii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law, as if these directions were not issued at all.

iv) If they were arrested prior to 20/7/2007, they shall be released on their executing bonds for Rs.25,000/- (Rupees twenty five thousand only) each without any sureties undertaking to appear before the learned Magistrate on 20/7/2007.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007